IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8521 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAILBHAI IBRAHIMBHAI KUSHKIWALA

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

MRS SIDDHI TALATI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/04/2001

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Article 226 of the Constitution of India.

2. The petitioner herein challenges the order passed against the petitioner by the District Supply Officer

which is the competent authority under the Gujarat Essential Articles (Licensing Control and Stock Declaration) order, 1981, upholding the charges levelled against the petitioner in respect of the show-cause notice issued to the petitioner in respect of various irregularities committed and deficiencies noted during the course of the visit to the petitioner's establishment. The said order was confirmed in appeal by the Collector as also confirmed in revision by the State Government.

3. The petitioner held licences under the provisions of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 in respect of kerosene and also crude oil. It may be noted that there were two separate licenses: (i) for wholesale trade in kerosene as also crude oil and (ii) for retail trade only in crude oil.

4. The establishment of the petitioner was subjected to a visit and inspection on 17th December 1994, and as a result thereof five serious deficiencies/irregularities/ non-compliance with the terms and conditions of the licence were noticed, in respect whereof a show-cause notice was issued to the petitioner on 1st February 1995 as per Annexure-A to the petition. It is pertinent to note that the said show-cause notice specifically sets out that unless satisfactory explanations are given in respect of the five allegations stated therein, the licences are liable to be revoked as also the deposit is liable to be confiscated either partly or fully.

5. It is also pertinent to note that as a result of the aforesaid visit an interim order had been passed whereby the specific stock found on the date of the visit was directed to be seized.

6. The petitioner filed his reply dated 28th February 1995 to the show-cause notice. The competent authority viz. the District Supply Officer, the third respondent herein, after hearing the party, found that all the five allegations contained in the show-cause notice were found to be established, that the explanations offered by the petitioner in respect thereof were not acceptable in view of the evidentiary material on record and ultimately both the aforesaid licences were directed to be revoked and 100% of the licence deposit was directed to be confiscated.

7. Being aggrieved by the aforesaid order, the

petitioner preferred an appeal before the Collector, Sabarkanta District. This appeal was rejected by the Collector and the order passed by the competent authority was confirmed.

8. The petitioner challenged the order passed the Collector before the State Government by way of revision, which also came to be rejected on merits and the orders passed by the competent authority and the appellate authority were confirmed. Hence the present petition under Article 227 of the Constitution of India.

9. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khalil Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

10. Learned counsel for the petitioner has addressed me at considerable length. However, the main thrust of his contentions is that the findings of fact recorded by all the three authorities are not correct in the light of the explanation offered by the petitioner. No matter how this submission is presented and even if different language is used in each different mode of presentation, the fact remains that the learned counsel for the petitioner has attempted to persuade me that the appreciation of evidence by the authorities concerned is either faulty or incomplete or prejudiced or that the petitioner's contentions have not been correctly understood in the light of the submissions made before the concerned authorities. Be that as it may, the attempt before me on the part of the petitioner is to challenge the findings of fact, which is not permissible in a petition under Article 227 of the Constitution of India.

11. What requires to be noted particularly in the context of the petitioner's submissions made before me is that the findings recorded by the authorities against the petitioner in respect of the specific charges levelled against him in the show-cause notice are based on (i) the notings made by the inspecting team during the course of inspection of the premises of the petitioner (ii) the statement given by the petitioner and recorded by the team and (iii) the Panchnama recorded by the inspection team. The contents of such statement and Panchnama have not been specifically challenged in any of the three proceedings which have gone against the petitioner. The only submission made in this context, in different forms and different language, is that the explanations offered by the petitioner in respect of each of the charges deserve to be accepted. Suffice it to say that when each of the five charges is examined individually, it could not possibly be urged that the explanation offered by the petitioner in respect of all the charges could possibly be accepted. In other words, there is some attempt to offer explanation for the irregularities and defaults which constitute the five charges against the petitioner, whereas in respect of some of the charges there are admissions on record coupled with an assurance that such defaults shall not be repeated.

12. To be more particular, so far as charge no.1 is concerned, it is found that the physical stock which was found in respect of kerosene and crude oil as measured by the inspecting team did not tally with the stock of each of these two items with the official record maintained by the petitioner. It is found that the actual stock physically held at the time of inspection in respect of kerosene was in excess of the stock on record by 2302 liters, whereas the actual stock of crude oil measured at the time of inspection was short by 4043 liters in relation to the stock shown in the record of the petitioner. These two aspects constitute two of the charges against the petitioner. The actual fact that there was excess stock in one item and shortage of stock in other item is not in dispute except that the petitioner has sought to offer an explanation, which on the facts of the case, each of the three authorities has found to be unacceptable.

13. In this context it requires to be noted that when the petitioner holds a wholesalers licence in respect of both kerosene and crude oil and also holds a retail licence in respect of crude oil, and the entire business is run from the same premises, it could not possibly be

suggested and in fact it is not even urged by the petitioner, that the petitioner was not required under the terms and conditions of the licence to maintain separate storage tanks for kerosene as also for crude oil. It is also an admitted position that the entire stock of both the items running into thousands of liters was maintained not in the storage tanks, but only in barrels. It is also an admitted position that barrels of kerosene and barrels of crude oil were not segregated and kept apart in different portions of the premises, but were stacked together in one lot. Obviously, therefore, when the explanation offered by the petitioner to the effect that the employees of the petitioner might have through error or oversight emptied crude oil from the delivering tanker into the barrels already holding kerosene, such explanation cannot be accepted. Not only would such an explanation run counter to ignoring the specific terms and conditions of the licence as to maintenance of separate storage tanks for each of the two items, but would encourage adulteration under the guise of bonafide error.

14. The charge no.3 pertains to the notice board required to be maintained on which the stock as also separate wholesale price and retail price are required to be noted. Such things were in fact not noted at all. Again there is no rational explanation offered by the petitioner except to state that this is an oversight and will not be repeated.

15. So far as charge no.4 is concerned, the petitioner was required to send monthly statements in the prescribed form to the competent authority which admittedly he has not done. He has produced by way of evidence only the form in respect of the month preceding the visit, whereas the charge pertains not only to that specific month, but is of general nature to the effect that the petitioner has failed to furnish the requisite details in the prescribed form which is to be maintained and forwarded in the form of monthly statements. Even if one such monthly statement had been furnished in the prescribed form, it does not disprove the charge that monthly statements in the prescribed form were not regularly furnished. The only defence taken in its record is to the effect that even if the information was not supplied to the competent authority in the prescribed form, the petitioner was supplying the information in letter form or in some other form. Obviously this is not in due compliance with the terms and conditions of the licence, particularly when it is noticed that even such information which was supplied in a non prescribed format

was not supplied regularly every month.

16. Furthermore, the shortage of stock discovered in respect of crude oil corresponds roughly with the excess stock in respect of kerosene. The explanation offered in respect of this discrepancy is that on the day of the visit the quantity which is found to be short had been sold to third parties, which is reflected in the record of the petitioner. In fact it is not reflected in the bill books produced by the petitioner. This is a specific finding of fact which is also supported by another specific finding of fact to the effect that the carbon copies of the bills which are required to be maintained under the terms and conditions of licence are not in the prescribed format. Therefore, merely by looking at the carbon copies, it could not be established that the shortage of stock discovered is as a result of sale effected to third parties.

17. As regards charge no.3 it is admitted that the petitioner was required to maintain a sign board indicating the wholesale price as also the retail price for crude oil, whereas in fact the notice board did not indicate such separate prices at all.

18. As regards charge no.5 nothing much requires to be said inasmuch as the petitioner has admitted the default and has given an assurance to rectify the same in future.

19. Ultimately all that emerges from these explanations is that these violations are of a minor and technical nature and do not justify the cancellation of licence. Obviously this is merely a subjective view and subjective submission of the petitioner. The fact that the charges are proved, and the fact that the two dissimilar products meant for different purposes are found to be mixed up with each other, may lead to a reasonable conclusion that one item is being mixed with the cheaper item in order to earn illegitimate profit. I may, however, point out that this is the mere possibility which I am contemplating and this is not one of the findings recorded by any of the authorities below. However, the fact that this distinct possibility cannot be ignored when the seriousness of the consequences is taken into consideration for the purpose of imposing punishment. On the facts and circumstances of the case, therefore, I am satisfied that in view of this possibility the punishment imposed as to cancellation of the two licences in question and forfeiture of the entire deposit cannot be said to be too harsh and/or requires

any interference.

20. Learned counsel for the petitioner has sought to urge, which according to him, is a pure question of law.

20.1 Learned counsel for the petitioner states that at the time of the visit a sample of each of the two products was taken for the purpose of analysis, and according to the report of the forensic science laboratory, the crude oil is found to be adulterated. In this context the learned counsel urged that adulteration was never one of the charges levelled against the petitioner in the show-cause notice and that therefore he had no opportunity nor occasion to raise any defence in this context. While it is true that there are no allegations as to adulteration in the show-cause notice, it is equally true that the report of the forensic science laboratory as to adulteration is not regarded by any of the three authorities below to be proof or establishment of any charge levelled against the petitioner. The fact that the sample was found to be adulterated has only been taken into consideration for ancillary purposes, and is coupled with other facts to the effect that other such and similar violations have also been found to have been established against the petitioner in the past, and is only relied upon for the limited purpose of taking a serious view of the matter for purposes of imposing the punishment and nothing further. In this context therefore subsidiary contentions raised by the learned counsel for the petitioner to the effect that the sample was not taken in accordance with law or that it was not analysed in accordance with law or that he was not given an opportunity of leading contrary evidence, do not and cannot arise.

22. Even otherwise, these and similar contentions have not been raised before the competent authority nor in appeal nor in revision. This and similar allied contentions have been raised for the first time in the present petition before me.It is well settled law that the High Court cannot in the exercise of its jurisdiction under Article 227 of the Constitution of India permit a new point to be raised for the first time in such a petition, particularly when it involves investigation into facts. This contention is, therefore, rejected.

23. Learned counsel for the petitioner then sought to urge that the kerosene which was seized from the premises at the time of inspection, if found to be adulterated, could not have been sold by the authorities in the open

market, which has been admittedly sold. It was contended that if it was really adulterated, the authorities could not have sold in the open market. This is neither here nor there. There is not an iota of evidence that the kerosene which was seized from the stock of the petitioner on the relevant date was sold in the open market as pure kerosene or kerosene which met with the required standards according to law. It is equally possible that the same may have been sold as sub-standard or impure kerosene, or may have been sold on usual terms i.e. "as is where is basis", implying that the seller does not offer any warranty as to its quality or condition. This contention, therefore, does not advance the case of the petitioner any further.

24. Learned counsel for the petitioner has repeatedly sought to urge that the explanation offered by the petitioner in his reply to the show-cause notice have not been considered by the authorities at all. Unfortunately this is a misconception on the part of the learned counsel for the petitioner, and/or a misunderstanding of the orders impugned in the present petition. Learned counsel for the petitioner appears to hold a view that merely because the explanations offered by the petitioner are not accepted, it is equivalent to such explanations not being considered. Obviously such a view cannot be accepted by the court inasmuch as the impugned orders and particularly the orders in appeal and in revision extensively deal with the explanation offered by the petitioner, point by point, in respect of each of the five charges levelled and found proved against the petitioner.

25. In the premises aforesaid, I find that there is no substance in the present petition and the same is, therefore, required to be rejected. Accordingly the petition is rejected and rule is discharged with costs. Interim relief stands vacated.

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